



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/606,410

06/25/2003

Bart Munro

2043.097US1

5665

49845

7590

07/15/2010

SCHWEGMAN, LUNDBERG & WOESSNER/EBAY

P.O. BOX 2938

MINNEAPOLIS, MN 55402

EXAMINER

THERIAULT, STEVEN B

ART UNIT

PAPER NUMBER

2179

NOTIFICATION DATE

DELIVERY MODE

07/15/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USPTO@SLWIP.COM

request@slwip.com

Office Action Summary	Application No. 10/606,410	Applicant(s) MUNRO ET AL.	
	Examiner STEVEN B. THERIAULT	Art Unit 2179	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 April 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 33-54 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 33-54 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>04/26/2010</u> . | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 2179

DETAILED ACTION

1. This action is responsive to the following communications: amendment and arguments filed 04/26/2010.

This action is made Final.

2. Claims 33-54 are pending and new in the case. Claims 1-32 are the cancelled claims. Claims 33, 43, 53 and 54 are the amended claims.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on 04/26/2010 was filed after the mailing date of the non-final rejection on 01/25/2010. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35

U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor

Art Unit: 2179

and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. **Claims 33-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fishkin et al. U.S Patent No. 5,841,437 issued Nov. 24, 1998, in view of Fowler et al. (Herein Fowler) U.S. Publication No. 200201944166 filed Feb. 14, 2002.**

In regard to **Independent claim 33**, Fishkin teaches a computer-implemented method comprising:

- Presenting a first search interface to a user, the first search interface including first and second search criteria and indicating the first and second search criteria as available for inclusion in a first search query to be submitted by the user (See column 5, lines 1-26, column 16, lines 49-67 and column 17, lines 5-51). Fishkin shows a display with U.S. census data and boxes that are graphically depicted as longitudinal and latitude figures representing the United States. The user enters criteria to see the 1991 crime index and the user can select the Boolean operators to enter a number of search entries.
- Determining first search results using the first search query (See figure 5, column 18, and lines 33-60). Fishkin shows the display, figure 5 with the census data and selected attributes
- Presenting a second search interface to the user, the second search interface including the first search results and indicating the first search criteria as included in the first search query and the second search criteria as excluded from the first search query (See column 5, lines 30-35, NOT operation, column 16, lines 1-5, and column 19,

Art Unit: 2179

lines 1-42 and column 20, lines 55-67). Fishkin shows multiple VOR layers placed over the dataset with the first and second criteria being used or changed by the user.

Fishkin shows the user can select on the VOR the AND function in the first interface to include in the query (See and column 18, lines 30-67) and can use the OR and the NOT function to eliminate the second attribute, which is "Receiving a first selection from the user via the first search interface, the first selection indicating the first search criteria as selected for inclusion in the first search query" and "the receiving of the first selection being performed by a query build module implemented using a processor of a computer" (See figures 5, 6a and 6b).

Fishkin also **suggests** an **advantage** of the invention is the "capability to visually formulate database queries and visually presents the results of the queries by providing a conjunction/disjunction, negation and grouping of the regions to construct **virtually any Boolean query**" (See column 5, lines 25-30, and 48-56, column 15, lines 35-67 and column 16, lines 1-5 and column 20, lines 55-67). Fishkin suggests the queries are not simple Boolean queries and not just limited to AND, OR, NOT functions but allows for customized queries to be constructed on the interface. Fishkin also suggests and implies the use of the filters to manipulate the search queries to adjust the search results which can create a situation where some information is deselected from inclusion (See column 19, lines 40-60) by using moveable filters and interactive visual screens. While custom queries **can** be created, Fishkin does not specifically or expressly recite:

- and indicating the second search criteria as deselected from inclusion in the first search query,

Nonetheless, Fowler teaches a user interface with a component that allows a user during search query construction to deselect from inclusion, in the query, specific search results (See Figure 3a

Art Unit: 2179

and 3b). Fowler is an example of a custom query construct, as suggested in Fishkin, that through user interface inputs, a query can be adjusted to "deselect from inclusion" a search term from a search query. Fowler teaches a sifting mechanism where the search operation can "exclude or ignore" keywords related to a search query (see Para 41). Fowler teaches that **many different interfaces can be used to allow the user to interact with search queries** (See Para 40) and as long as the interface allows the user to select a keyword during the input sifting operation then the interface meets the sifting requirement. Fishkin teaches drop-down menus and combo-boxes that allow the user to make query selections in an interface to adjust search selections (See For example figure 5, 6 and 7. Fowler suggests customized Boolean functions (See Para 41, See also Para 44, 45 and 49) to be used with search functions as interface functions, to provide sifting operations because the interface allows for shaping a query by make search filter selections to exclude, include, include or require elements.

Therefore it would have been would have been obvious to one of ordinary skill in the art at the time of the invention having Fishkin and Fowler in front of them to modify Fishkin to include custom Boolean operators to deselect a search criteria from a search input. The motivation to combine Fowler with Fishkin comes from Fowler to allow the user through selection to control the exclusion or inclusion of search criteria to adjust search results (See Para 21-23).

With respect to **dependent claim 34**, Fishkin teaches the computer-implemented method of receiving a second selection from the user, the second selection indicating the first and second search criteria as selected for inclusion in a second search query determining second search results using the second search query (See Fishkin Figure 6a and 6b and 25 and column 19, lines 1-42). Fishkin also teaches presenting a third search interface to the user, the third search interface including the second search results and indicating the first and second search criteria as included in the second search query (See column 14, lines 20-67 and column 19, lines 1-67 and column 4, table 1, bottom multiple VOR can be shown.

Art Unit: 2179

With respect to **dependent claim 35**, Fishkin teaches the computer-implemented method wherein:

The second search criteria includes an attribute and an attribute value (See Figure 6b, annual pay); the method further comprising:

refreshing the second search interface to present at least one of the attribute or the attribute value as visually distinguished to indicate the second search criteria as included in the second search query (See Figure 6b as the blocks are visually enhanced to show user selections or changes (See also Figure 7 and Figure 8 and column 10, lines 1-15)..

With respect to **dependent claim 36**, Fishkin teaches the computer-implemented method further comprising:

monitoring the first search interface to detect an activation of an attribute link corresponding to at least one of the attribute or the attribute value (See column 19, lines 20-45 and Figure 7, shows a list of objects displayed based on the attribute in the interface).

With respect to **dependent claim 37**, Fishkin teaches the computer-implemented method wherein:

the attribute value comprises at least one of a category, a type, a size, a brand, a minimum price, a maximum price, or price range (See Figures 6b -8) (Fishkin shows a category of information).

With respect to **dependent claim 38**, Fishkin teaches the computer-implemented method wherein: the first search interface includes a checkbox to indicate that the second search criteria as excluded from the first search query(See column 5, lines 30-35, NOT operation, column 16, lines 1-5, and column 19, lines 1-42 and column 20, lines 55-67)..

Art Unit: 2179

With respect to **dependent claim 39**, Fishkin teaches the computer-implemented method wherein: the first search criteria includes a keyword (See column 15, lines 35-67 and column 16, lines 1-16).

With respect to **dependent claim 40**, Fishkin teaches the computer-implemented method wherein: the second search criteria includes at least one of a category, a title, or a description (See column 18, lines 1-67).

With respect to **dependent claim 41**, Fishkin teaches the computer-implemented method further comprising: generating at least one of the first or second search interfaces (See Figure 6a-6b and 8).

With respect to **dependent claim 42**, Fishkin teaches the computer-implemented method, wherein: the search results are representative of listings stored in a database of products available for at least one of an auction or a sale (See column 19, lines 1-67 and column 20, lines 5-67).

With respect to claims **43-52, 54** claims 43-52, 54 reflect the system comprising computer readable instructions for performing the steps in method claims 33-42, respectively and thus are rejected along the same rationale. Fishkin clearly teaches a medium and system for performing the functions of displaying a search interface and accepting input into the interface (See figure 17, memory 860, processor 140 and display 180). The means, as believed to find support and definition in the present application specification, Page 10, Para 22) and is shown where a first search interface is presented to a user in Fishkin figure 17, a display, a processor and memory to present the first VOR and second VOR are also shown in figure 6a and 6b, which show user inputs for search criteria and to determine the shown user selections via the input device to change the displayed search results. The means for receiving and determining and presenting (See present application Para 24, 25 and 27, 29-30 and 35) are shown (See Fishkin column 10, lines 45-67 and column 11, lines 1-20) with Figure 17, 152, 140 and 150 and Figures 5-10.

Art Unit: 2179

With respect to claim **53**, claim 53 reflects the medium computer readable instructions for performing the steps in method claim 1 and thus is rejected along the same rationale.

A reference to specific paragraphs, columns, pages, or figures in a cited prior art reference is not limited to preferred embodiments or any specific examples. It is well settled that a prior art reference, in its entirety, must be considered for all that it expressly teaches and fairly suggests to one having ordinary skill in the art. Stated differently, a prior art disclosure reading on a limitation of Applicant's claim cannot be ignored on the ground that other embodiments disclosed were instead cited. Therefore, the Examiner's citation to a specific portion of a single prior art reference is not intended to exclusively dictate, but rather, to demonstrate an exemplary disclosure commensurate with the specific limitations being addressed. *In re Heck*, 699 F.2d 1331, 1332-33, 216 USPQ 1038, 1039 (Fed. Cir. 1983) (quoting *In re Lemelson*, 397 F.2d 1006, 1009, 158 USPQ 275, 277 (CCPA 1968)). *In re: Upsher-Smith Labs. v. Pamlab, LLC*, 412 F.3d 1319, 1323, 75 USPQ2d 1213, 1215 (Fed. Cir. 2005); *In re Fritch*, 972 F.2d 1260, 1264, 23 USPQ2d 1780, 1782 (Fed. Cir. 1992); *Merck & Co. v. Biocraft Labs., Inc.*, 874 F.2d 804, 807, 10 USPQ2d 1843, 1846 (Fed. Cir. 1989); *In re Fracalossi*, 681 F.2d 792, 794 n.1, 215 USPQ 569, 570 n.1 (CCPA 1982); *In re Lamberti*, 545 F.2d 747, 750, 192 USPQ 278, 280 (CCPA 1976); *In re Bozek*, 416 F.2d 1385, 1390, 163 USPQ 545, 549 (CCPA 1969).

Response to Arguments

5. Applicant's arguments with respect to claims 33-54 have been considered moot in light of the new grounds of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 5721897 to Rubinstein which expressly teaches a user interface with a first interface section 205 with search criteria displayed and selectable (See Figure 2) and a second interface area 242 and 246 which allow a user to include and exclude search criteria.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action.

Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH

Art Unit: 2179

shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to STEVEN B. THERIAULT whose telephone number is (571)272-5867. The examiner can normally be reached on Mon.-Fri. 10 am - 7 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (571) 272-4847. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Steven B Theriault/
Primary Examiner
Art Unit 2179

Art Unit: 2179